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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,782	01/15/2002	Stephen F. Gass	SDT 326A	2746
27630	7590	06/30/2004	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			ASHLEY, BOYER DOLINGER	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,782

Applicant(s)

GASS ET AL.

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 7-20 is/are pending in the application.
- 4a) Of the above claim(s) 3,4 and 8-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 20 is/are rejected.
- 7) ☒ Claim(s) 5 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 13, 14, 4/17/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: ids 1449 4/25/04.

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DETAILED ACTION

1. This office action is in response to applicant's amendment filed 4/1/04, wherein claims 1, 5, 7, and 20 were amended; and claims 2 and 6 were canceled. Claims 1, 3-5, 7-20 remain pending with claims 3-4, and 8-19 remain withdrawn as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brundage et al., U.S. Patent 4,934,233, in view of Lokey, U.S. Patent 3,785,230.

Brundage et al. discloses the invention substantially as claimed, including, a base assembly (3,123,127) configured to support a workpiece (see Figure 2); a pivot arm assembly (121,19,163,161,143) coupled to the base (at location 25) and selectively pivotable toward and away from the cutting zone, where the pivot arm assembly includes a first housing (19, see Figure 2), an arm (121) extending between the base assembly and the first housing (see Figure 2), a second housing (41/143) and at least one link (161) interconnecting the base assembly and the second housing such that the second housing pivots relative to the first housing in a direction counter to the pivoting of the pivot arm assembly; a rotatable blade and shaft (see Figures 7 and 11) supported by the pivot arm assembly, wherein second housing pivots about the axis of the arbor.

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Brundage et al. lacks the detection system configured to detect a dangerous condition between a person and the blade; and braking system capable of stopping the rotation of the blade such that a fraction of the angular momentum of the blade is capable of being transferred to the housing assembly thereby allowing the pivot arm assembly to be urge away from the cutting zone. However, Lokey discloses that it is old and well known in the art to use braking systems with saws for the purpose of preventing injury to a user upon detecting a dangerous condition between the blade and the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a braking system with the miter saw of Brundage et al. in order to preventing injury to a user.

As to the phrase "configured to ... at least a fraction of the angular momentum of the blade to the pivot arm assembly; and where the pivot arm ... to urge the blade away from the cutting zone" is merely functional/intended use not defining any specific structure and only requires the prior art devices to be capable of performing the intended use. In this case, the modified device of Brundage et al. is fully capable of *transferring at least a faction of the angular momentum of the blade to the pivot arm assembly* no matter where the braking system of Lokey is applied to the miter saw of Brundage et al.

As to claim 20, the above rejection applies equally well except that different language is used for the pivot arm assembly. The only other difference is that claim 20 utilities means plus function language for the braking means; however, a review of the specification indicates that the structure for performing these functions is merely the

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same as in claim 1, i.e., a blade engagement brake member actuated by a dangerous condition detection circuit. The modified device of Brundage et al. disclose the equivalent structure capable of performing the recited function, that is, a brake and dangerous condition detection circuit.

Allowable Subject Matter

4. Claims 5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments with respect to claims 1-2 and 20 have been considered but are moot in view of the new ground(s) of rejection.

The examiner agrees with applicant's comments regarding claims 5 and 7. Although, one can argue the appropriateness of the previous rejection with regard to locating a braking cartridge on the pivot arm adjacent the blade, there is no motivation in the previously applied references to locate braking cartridge on the second housing portion much less having the braking cartridge serve as part of the exterior surface of the second housing. Clearly, this is more than just simple rearrangement of parts because the interior guard/housing would interfere with the braking of the blade during a cutting operation if the brake was located on the upper (outer guard) because the interior guard/housing rotates into the outer/upper guard/housing.

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Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
June 25, 2004